



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 03, 2022

IN THE MATTER OF:

Appeal Board No. 623990

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determinations holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 9, 2020 through September 9, 2021, and charging the claimant with an overpayment of \$7,314 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a). The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed May 17, 2022 (), the Administrative Law Judge sustained the initial determinations.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant is self-employed and owns a beauty salon. She established S Corporations for the business, ROYALTY and its successor, SHIRLEY. For 2019, ROYALTY reflected a business net income loss of \$9,930 and SHIRLEY reflected a business net income gain of \$268. The claimant applied for PUA benefits on July 17, 2020, which was made to be effective beginning March 9, 2020. The Department of Labor paid the claimant a gross amount of PUA benefits of \$288 for the weeks ending March 15, 2020 through week ending May 17, 2020 and from the weeks ending July 26, 2020 through the week ending

September 5, 2021. The claimant received the benefits.

The Department of Labor determined the claimant's eligibility and found her ineligible to receive Pandemic Unemployment Assistance (PUA) benefits and that she was overpaid PUA benefits. The initial determination had a date mailed of March 23, 2022.

OPINION: The Administrative Law Judge in 022-10817 (filed March 17, 2022) decided that the claimant did not make a willful misrepresentation. There was no appeal from that decision. We are bound by that decision holding that the claimant did not make a willful misrepresentation.

Pursuant to Labor Law § 597 (3), any determination regarding a benefit claim may, in the absence of fraud or willful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information.

The credible evidence establishes that the Department of Labor only has the necessary jurisdiction to reach the merits of this case going back to March 23, 2021. As the determination of willful misrepresentation was overruled, we may only consider the period beginning March 23, 2021.

Pursuant to 20 CFR § 625.6(a)(2), for purposes of computing the PUA weekly amount, the "most recent tax year ... prior to the individual's unemployment" shall serve as the base period, and the "self-employment income to be treated as wages for purposes of computing the weekly amount" shall be the "net income reported on the tax return of the individual as income from all self-employment that was dependent upon the performance of services by the individual." Pursuant to Section 2102(d) of the Coronavirus Aid, Relief and Economic Security (CARES) Act, the weekly benefit rate for claimants receiving Pandemic Unemployment Assistance (PUA) benefits is determined in accordance with state "unemployment compensation law", namely, NY Labor Law § 590(5), and

Section 625.6 of title 20 of the Code of Federal Regulations (CFR), and the minimum weekly benefit rate cannot be less than the minimum amount established by the US Department of Labor pursuant to Section 625.6(b) of title 20 of the Code of Federal Regulations. Pursuant to NY Labor Law § 590 (5), a claimant's

weekly benefit amount shall be one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers, provided the claimant has remuneration in all four calendar quarters during the base period. Pursuant to the U.S. Department of Labor, New York State paid the minimum PUA weekly benefit rate of \$182 (See Unemployment Insurance Program Letter No. 11-20 and No. 16-20, Change 1).

Here, as the claim was filed in 2020, the applicable base period is the 2019 calendar year. The claimant has 2019 business net income gain of \$268 from SHIRLEY and business net income of a loss of \$9,930 from ROYALTY. The Department properly determined that the PUA weekly benefit rate was the minimum of \$182. Accordingly, we further conclude that the claimant's objection to the PUA weekly benefit rate amount is overruled for the period beginning March 23, 2021.

Pursuant to Section 2102(h) of the CARES Act of 2020, the regulations at 20 CFR 625 covering Disaster Unemployment Assistance (DUA) are also applicable to PUA; and pursuant to 20 CFR 625.14 (a), individuals who receive PUA benefits to which they were not entitled are liable to repay the overpaid benefits regardless of whether the payment was due to the individual's fault or misrepresentation. As the claimant was not entitled to the higher benefit rate, we further conclude that the difference between the two benefit rates is recoverable for the benefits paid on and after March 23, 2021. The amount of the overpayment is referred back to the Department of Labor for recalculation in accordance with this decision.

We are not persuaded by the claimant's contention that the case should be remanded for an interpreter. The claimant appeared at the hearing with her representative, was able to answer the Judge's questions, and declined the Judge's offer of an interpreter.

DECISION: The decision of the Administrative Law Judge is modified as follows, and as so modified, affirmed.

The initial determinations, holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 9, 2020 through September 9, 2021, and charging the claimant with an overpayment of \$7,314.00 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES)

Act of 2020 and 20 CFR Section 625.14 (a), are modified to be effective March 23, 2021 through September 9, 2021, and, as so modified, are sustained.

The amount of the overpayment is referred back to the Department of Labor for recalculation.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER